

E-FILED on 11/8/12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSE MANUEL BEDALLA,
Plaintiffs,

v.

BANK OF AMERICA, N.A., organized and
existing under laws of New York,
RECONTRUST COMPANY, N.A., is
organized and exists under the laws of the State
of Texas,

Defendants.

No. 12-cv-02307-RMW

ORDER GRANTING MOTION TO DISMISS

[Re Docket No. 9, 24]

Defendant Bank of America, N.A. ("BANA") moves to dismiss plaintiff's complaint under Fed. R. Civ. P. ("Rule") 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. Plaintiff has failed to file a written response to defendant's motion. Having considered the papers submitted, the court finds the matter suitable for disposition without oral argument and vacates the hearing set for November 9, 2012. The court further grants defendant's motion to dismiss under Rule 12(b)(1) with leave to amend.

I. BACKGROUND

On May 8, 2012, plaintiff filed his complaint relating to the foreclosure of his property. Plaintiff brings solely state law causes of action against defendants and alleges that defendants

1 improperly foreclosed because defendants do not possess the original note. Dkt. No. 1 (Compl.) at
 2 4-5. Plaintiff further claims that the deed of trust on his property was invalid because it was
 3 transferred to the Mortgage Electronic Registration System ("MERS") as a nominee beneficiary,
 4 causing the note on the property and the deed of trust to be separated. *Id.* Plaintiff, a domiciliary of
 5 California, asserts that this court has diversity jurisdiction because BANA is a New York citizen and
 6 he alleges that defendant ReconTrust, N.A. ("ReconTrust") is a Texas citizen. *Id.* at 1-2. On August
 7 16, 2012, BANA brought the instant motion to dismiss.¹

8 II. ANALYSIS

9 BANA claims that, contrary to plaintiff's assertions in the complaint, ReconTrust is a
 10 California citizen for purposes of diversity jurisdiction, and therefore subject matter jurisdiction
 11 does not exist.

12 Pursuant to 28 U.S.C. § 1332(a), diversity jurisdiction exists where the amount in
 13 controversy exceeds \$75,000 and no defendant party shares citizenship in the same state as the
 14 plaintiff. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005) (citing
 15 *Strawbridge v. Curtiss*, 3 Cranch 267, 2 L.Ed. 435 (1806)). For the purposes of diversity
 16 jurisdiction, national banking associations are "deemed citizens of the States in which they are
 17 respectively located." 28 U.S.C. § 1348. A national banking association is "located" in "the State in
 18 which its main office, as set forth in its articles of association, is located." *Wachovia Bank v.*
 19 *Schmidt*, 546 U.S. 303, 307 (2006) (construing 28 U.S.C. § 1348).

20 Here, ReconTrust is a national banking association with its designated main office in Simi
 21 Valley, California. Dkt. No. 24-3, Ex. A at 1 (amended articles of association); *see also Rodriguez*
 22 *v. Bank of Am. Corp.*, No. 11-1877, 2012 WL 2375833, at *3 (D. Nev. June 21, 2012) (finding
 23 ReconTrust to be a California citizen for purposes of diversity jurisdiction). Accordingly, there is
 24 no diversity of citizenship between ReconTrust and plaintiff and, as a result, no subject matter
 25 jurisdiction by which this court may act. *See* 28 U.S.C. § 1332; *Wachovia Bank*, 546 U.S. at 307.
 26 The court thus dismisses plaintiff's complaint under Rule 12(b)(1) with leave to amend. *See Grupo*

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 28 ¹ The original motion was noticed in front of Magistrate Judge Paul S. Grewal. On September 25,
 2012, the matter was reassigned to this court. BANA renoticed the motion on October 5, 2012.

1 *Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 572 (2004) (plaintiff may correct a jurisdictional
2 defect by amending the complaint to dismiss a non-diverse party). Based on this disposition, the
3 court does not reach defendant's Rule 12(b)(6) motion.

4 **III. ORDER**

5 For the foregoing reasons, the court grants defendant's motion under Rule 12(b)(1) and
6 dismisses the complaint without prejudice, allowing plaintiff 30 days from the date of this order to
7 amend his complaint. Plaintiff's failure to timely file an amended complaint will result in a
8 dismissal of his case with prejudice.

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12 DATED: November 8, 2012


RONALD M. WHYTE
United States District Judge